

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the matter of)	
)	
Raycom America License Subsidiary, LLC)	Facility ID No. 591
Licensee of WAFF(TV), Huntsville, AL)	NAL/Acct. No. 0641420009
)	FRN: 0011561321

**NOTICE OF APPARENT
LIABILITY FOR FORFEITURE**

Adopted: December 6, 2005**Released: December 9, 2005**

By the Chief, Media Bureau:

I. INTRODUCTION

1. The Commission, by the Chief, Media Bureau, pursuant to delegated authority, has before it for consideration a license renewal application for the captioned television station in Huntsville, Alabama. We find that Raycom America License Subsidiary, LLC (Raycom America), licensee of station WAFF(TV), Huntsville, Alabama, willfully and repeatedly violated Section 73.3526(e)(11)(i) of the Commission's Rules (Rules), by failing to place in the station's public inspection file TV issues/programs lists for each calendar quarter.¹ For the reasons set forth below, we find Raycom America apparently liable in the amount of ten thousand dollars (\$10,000) for its violation of Section 73.3526(e)(11)(i) of the Rules.

II. BACKGROUND

2. Section 73.3526 of the Rules requires broadcast licensees to maintain a public inspection file containing specific types of information related to station operations.² Section 73.3526(e)(11)(i) provides that a TV issues/programs list is to be placed in a commercial TV broadcast station's public inspection file each calendar quarter. Where lapses occur in maintaining the public file, neither the negligent acts nor omissions of station employees or agents, nor the subsequent remedial actions undertaken by the licensee, excuse or nullify a licensee's rule violation.³

3. On November 29, 2004, the licensee filed a license renewal application (FCC Form 303-S) for station WAFF(TV), Huntsville, Alabama (File No. BRCT-20041129AOG). In

¹ 47 C.F.R. § 73.3526(e)(11)(i).

² See 47 C.F.R. § 73.3526.

³ See *Padre Serra Communications, Inc.*, 14 FCC Rcd 9709 (1999) (citing *Gaffney Broadcasting, Inc.*, 23 FCC 2d 912, 913 (1970) and *Eleven Ten Broadcasting Corp.*, 33 FCC 706 (1962)); *Surrey Range Limited Partnership*, 71 RR 2d 882 (FOB 1992).

response to Section IV, Question 3 of that application, the licensee certified that, during the previous license term, station WAFF(TV) failed to place in the public inspection file at the appropriate times, the documentation required by Section 73.3526 of the Rules. In Exhibit 17 to the renewal application, the licensee indicates that during a routine review of station WAFF(TV)'s public inspection file in November 2001, it discovered that eight TV issues/programs lists through the first quarter of 1999 were removed and lost. Moreover, the licensee reports that after personnel changes at the station, TV issues/programs lists for the second quarter of 1999 through the third quarter of 2001 were not prepared. The licensee claims that after this discovery it immediately took steps to recreate the lost TV issues/programs lists and to prepare the missing TV issues/programs lists for the public file. Finally, the licensee describes the procedures it implemented to ensure future compliance.

III. DISCUSSION

4. WAFF(TV)'s failure to prepare and retain in its public inspection file TV issues/programs lists constitutes a willful and repeated violation of Section 73.3526(e)(11)(i). While corrective actions may have been taken to prevent future violations, this does not relieve the licensee of the violations which have occurred. *International Broadcasting Corp.*, 19 FCC 2d 793 (1969).

5. Section 503(b) of the Communications Act of 1934, as amended, (Act) provides that any person who willfully or repeatedly fails to comply substantially with the terms and conditions of any license, or willfully fails to comply with any of the provisions of the Act or of any rule, regulation or order issued by the Commission thereunder, shall be liable for a forfeiture penalty.⁴ In determining the appropriate forfeiture amount, we must consider the factors enumerated in Section 503(b)(2)(D) of the Act, including "the nature, circumstances, extent and gravity of the violation, and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and such other matters as justice may require."⁵

6. *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80(b) of the Rules to Incorporate the Forfeiture Guidelines (Forfeiture Policy Statement)* and Section 1.80 of the Rules establish a base forfeiture amount of \$10,000 for public file violations.⁶ In this case, the licensee concedes that the station's TV issues/programs lists for several quarters were

⁴ 47 U.S.C. § 503(b).

Section 312(f)(1) of the Act, 47 U.S.C. § 312(f)(1), which applies to violations for which forfeitures are assessed under Section 503(b) of the Act, provides that "[t]he term 'willful', when used with reference to the commission or omission of any act, means the conscious and deliberate commission or omission of such act, irrespective of any intent to violate any provision of this Act or any rule or regulation of the Commission authorized by the Act" See *Southern California Broadcasting Co.*, 6 FCC Rcd 4387 (1991).

Section 312(f)(2) of the Act provides that "[t]he term 'repeated,' when used with reference to the commission or omission of any act, means the commission or omission of such act more than once or, if such commission or omission is continuous, for more than one day." 47 U.S.C. § 312(f)(2).

⁵ 47 U.S.C. § 503(b)(2)(D); see also *Forfeiture Policy Statement*, 12 FCC Rcd 17087, 17100 (1997), *recon. denied*, 15 FCC Rcd 303 (1999); 47 C.F.R. § 1.80(b)(4).

⁶ 47 C.F.R. § 1.80(b)(4), Note to paragraph (b)(4): Section I. Base Amounts for Section 503 Forfeitures; *Forfeiture Policy Statement*, 12 FCC Rcd at 17113, Appendix A, Section I.

missing from the public inspection file. As a result, the public file was not complete for a substantial period of time. Considering the record as a whole, we believe that a \$10,000 forfeiture is appropriate for the violations in this case.

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 503(b) of the Communications Act of 1934, as amended, and Sections 0.283 and 1.80 of the Commission's Rules,⁷ Raycom America License Subsidiary, LLC is hereby NOTIFIED of its APPARENT LIABILITY FOR FORFEITURE in the amount of ten thousand dollars (\$10,000) for willful and repeated violations of Section 73.3526 (e)(11)(i) of the Commission's Rules as indicated above.⁸

8. IT IS FURTHER ORDERED, That pursuant to Section 1.80 of the Commission's Rules, within thirty days of the release date of this Notice, Raycom America License Subsidiary, LLC SHALL PAY the full amount of the proposed forfeiture or SHALL FILE a written statement seeking reduction or cancellation of the proposed forfeiture. Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, at P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank/LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106. Requests for full payment under the installment plan should be sent to: Chief, Revenue and Receivables Operations Group, 445 12th Street, S.W., Washington, D.C. 20554.⁹

9. Finally, IT IS FURTHER ORDERED that, a copy of this Notice of Apparent Liability shall be sent by First Class and Certified Mail, Return Receipt Requested to the licensee at RSA Tower, 201 Monroe Street, 20th Floor, Montgomery, Alabama 36104, and to its attorney of record, William H. Fitz, Esquire, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C. 20004-2401.

FEDERAL COMMUNICATIONS COMMISSION

Donna C. Gregg
Chief, Media Bureau

⁷ 47 C.F.R. §§ 0.283 and 1.80.

⁸ 47 C.F.R. § 73.3526(e)(11)(i).

⁹ See 47 C.F.R. § 1.1914.